IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

Meh Ram & Ors. vs. The State of Rajasthan.

D.B.Cri. Appeal No.271/1982

Under Section 374 (4) Cr.P.C. against the judgment dated 21.07.82 passed by the Addl. Sessions Judge, Nagaur in Sessions Case No. 09/82.

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Date of Judgment: 05th November, 2007.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD
HON'BLE MR.JUSTICE DEO NARAYAN THANVI

Mr.J.R.Choudhary for the appellant/s.
Mr.JPS.Choudhary, Public Prosecutor.

BY THE COURT :(PER HON.MR.BHAGWATI PRASAD,J.)-

The present appeal is filed by the accused appellants being aggrieved by the decision of the court of Additional Sessions Judge, Nagaur in Sessions Case No.09/1982 dated 21.07.82.

The prosecution was initiated on the basis of a report

lodged by injured Mangilal on 14.08.81 at Police Station Nagaur. In the oral report, it was stated by the complainant inter alia that he has a field which is about 1 km. away from the village. For going to the village , he has an old way from the fields of Heera, Chhagna and Jeevan (persons belonging to the accused party). This way is not recorded in the Govvernment record. Last year sons of accused Heera prohibited the sons belonging to the injured party from going on to their field by that unrecorded way. But on account of uncle Anna, they were pacified.

This year after rains accused Heera & Chhagna closed that way. The complainant party cultivated their field having gone through Basni. This is the case of the complainant that he and his wife were going for removing the weeds to another fields and at that time his own brother Ghewar and Sawanta were grazing herd at a distance. At that time accused Ram Narain and Ghewar caught him and entangled him into a quarrel on account of the way. They had a small quarrel and then got disengaged and went to the village.

The complainant further states that at about dusk when he was going alone towards village, and he reached near a water pond, accused Meh Ram and Baxa Ram having kassia and Ram

Narain, Heera Ram and Ram Niwas with lathis, surrounded the complainant . Baxa Ram gave a kassia blow on the complainant, which was prevented by him having taken that blow on hand. Kassia struck to his wrist on the hand. Accused Baxa Ram wanted to give another kassia blow which was avoided by Bhura Ram. At that time accused Meh Ram, , Moti, Anna Ram also arrived there. Accused Meh Ram s/o Chhagna Ram gave a blow of kassia on the head of Bhura who is the deceased. Accused Ram Niwas hit Meh Ram s/o Anna Ram, after which all the accused persons started beating.

On the basis of such report, the investigation was conducted. Charge sheet was filed and the accused were charge sheeted under Sections 147, 145, 302, 302/149, 323, 324, and 324/149 IPC.

The accused denied the charges and claimed trial. At the trial 14 witnesses were examined. Accused denied the prosecution case and stated that the complainant party came as assailants and suffered the worst of it. After considering the prosecution case, the accused appellants were convicted as under:

1	*2*	*3*	*4*
1	Meh Ram	U/s 148 IPC U/s 302 IPC	6 mnths' S.I. and a fine of Rs.100/- and in default to unergo 15 days' S.I. Life imprisonment and a fine of Rs.100/- and in default to further undergo 3 months' R.I.
2	Baxa Ram	U/s 147IPC U/s 324 IPC	6 months' S.I. and a fine of Rs.100 and in default to further undergo 15 days' S.I. -do-
3	Ram Niwas	U/s 323 IPC U/s 324 /149IPC	3 months' S.I. 6 months S.I. and a fine of Rs.100/- and in default to further undergo S.I. for 15 days.
4	Heera Ram	U/s 324/149 IPC	6 months' S.I. And a fine of Rs.100/- and in default to further undergo 15 days' S.I.
5	Ram Narayan	U/s 324/149 IPC	6 months' S.I. And a fine of Rs.100/- and in default to further undergo 15 days' S.I.

The learned counsel for the appellants submits that if the basic case of the prosecution is accepted as has been stated in the FIR then it is seen that the deceased Bhura was no where near , when the incident started and he came subsequently. Initially it was only

Mangi Lal who was assaulted by Baxa Ram. It is not a case where Section 149 IPC can be imported at all. Both the parties have fought with each other. A comparative study can be made in this regard of the injuries of the accused and the injuries of the complainants :-

Injuries of complainants :-

"3 अनुसंधान के दौरान डा0 श्री विजयसिंह घोडावत पी0 ड 09 ने 14-8-81 को मांगीलाल की चोट का डाक्टरी मुआयना किया और उसके शरीर पर निम्नलिखित चोट पायी।

1- कटा हुआ घाव 4, 5x7 से0 मी0 चमडी तक गहरा यह चोट दाहिनी भुजा के आगे के भाग पर बीच में स्थित थी जो आडे अकार में थी। यह चोट साधारण व धारदार आले की थी। मांगीलाल की चोट का प्रतिवेदन पत्र एक्जी पी09 जारी किया गया और यह चोट धारदार आले से आनी पायी गई।

4 दिनांक 14-8-81 को पी0 ड 09 डा0 घोडावत ने मेडिकल जूरिस्ट नागौर की हैसियत से मेहराम पुत्र अन्नाराम की चोटों का डाक्टरी मुआयना किया और उसके शरीर पर निम्न दो चोटे भोटे आले से आना पाया गई और उसका चोट प्रतिवेदन पत्र एक्जी पी010 जारी किया।

1- एक कुचला हुआ घाव 2x3 सेमी0 x चमडी तक

गहरा था यह चोट सिर के बायें पेराइटल क्षेत्र पर बीच के भाग से एक से0 मी0 बांयी तरफ तथा हेयरलाइन से 14 से0 मी0 पीछे थी।

2- एक नील 3.5 x 1.5 से0 मी0 आकार की जो बो कंधे के सामने की तरफ स्थित थी।

5 दिनांक 15-8-81 को डा0 घोडावत ने भूरा पुत्र अन्नाराम का शव परीक्षण किया और उसके शरीर पर निम्न दो चोटे आनी पायी:

1- कटा हुआ घाव 5x 1 से0 मी0 x हडडी तक गहरा था यह चोट सिर के मिड पैराइटल क्षैत्र पर थी। हडडी पूरी मोटाइ में चोट के नीचे कटी हुई थी दिमाग के उपर की सारी झिल्लियां कटी हुई थी। ब्रेन मेटर घाव की गहराई से दिख रहा था।

2- एक नील 3 x 2 से0 मी0 आकार की जो बाये पैर के बीच के भाग में आगे की तरफ स्थित थी। चोट मृत्यु से पूर्व की थी। ब्रेन मेटर भी घाव की गहराई में कटा हुआ था जो आधे से0 मी0 तक की गहराई तक कटा हुआ था।

डाक्टर ने यह मत व्यक्त किया है कि भूरा की मृत्यु दिमाग की चोट के कारण हुई और चोट नं0 1 के कारण मृत्यु हुई और उसका शव परीक्षण रिपोर्ट एक्जी पी011 है।

Injuries of the accused :-

6 दिनांक 14-8-81 को पी0 ड 09 ने मुलजिम बक्साराम पुत्र हीराराम की चोटों का पुलिस प्रार्थना पत्र डाक्टरी मुआयना किया और उसके शरीर पर निम्न दो चोटे कुंद आले से पायी गई और चोट प्रतिवेदन पत्र एक्जी डी05 जारी किया।

1- एक कुचला हुआ घाव 5x .4 से0 मी0 x मांस तक गहरा था यह चोट सिर के मिड पैराइटल भाग पर आडी थी।

2- एक नील 9x1.5 सेमी आकार की जो पेट के दाहिनी तरफ छाती के नीचे के किनारे पास में थी जो आडी थी।

7 दिनांक 15-8-81 को मुलजिम रामनारायण की चोटों का पी0 ड 09 डा0 घोडावत ने पुलिस प्रार्थना पर डाक्टरी मुआयना किया और उसके पांव चोटे निम्न भोटे आले से आनी पायी गई और डाक्टर ने चोटो का प्रमाण पत्र एक्जी डी06 जारी किया ।

1- खरोंच 1.5x1 से0 मी0 आकर का जो दाहिनी घुटने के सामने स्थित था।

2- खरोंच .5x .5 से0 मी0 आकार की जो बांयी बिचली अंगुली केप्रोक्जीमल इन्टरफेलेन्स जोइन्ट के पीछे की तरफ थी।

3- एक नील .5 x .5 से0 मी0 आकार की जो बोये अंगूठे के नीचे के भाग में अंदर का तरफ स्थित थी।

4- एक कुचला हुआ घाव .5 x .1 से0 मी0 x चमडी तक गहरा था यह चोट बांयी तर्जनी अगूंली के नीचे अंदर की तरफ थी।

5- खरोंच 1 x 1 से0 मी0 आकार की जो दाहिनी भुजा के पीछे के भाग में दाहिनी कोहनी के ठीक नीचे थी।

7 दिनांक 15-8-81 को मेहराम पुत्र छगनाराम मुलजिम की चोटों का डाक्टरी मुआयना पुलिस प्रार्थना पर पी0 ड 09 डा0 घोडावत ने किया और उसके शरीर पर निम्न 5 चोटे साधारण कुंद आले से आना पायी और उसका चोट प्रतिवेदन एक्जी डी0 7 जारी किया ।

1- खरोंच 1x1 से0 मी0 आकार की जो बांयी तर्जनी अंगुली पर बीच में पीछे के भाग में थी।

2- खरोंच 1 x .3 से0 मी0 आकार की जो बांयी बीच की अंगूली के उपर के भाग में बीच में थी।

3- नील 6x 1 से0 मी0 आकार की जो दाये कंधे के उपर के भाग में आडे आकार में थी।

4- दो खरोंचे 1.5 x .4 से0 मी0 थी जो दाहिनी जांघ के नीचले हिस्से पर थी दोनों एक दूसरी चोट से .5 से0 मी0 अलग थी।

8 दिनांक 15-8-81 को पुलिस प्रतिवेदन पर पी0 ड 09 डा0 घोड़ावत ने मुलजिम रामनिवास की चोटों का डाक्टरी मुआयना किया और उसके शरीर

पर दो चोटे भोटे आले से आनी पायी और चोट प्रतिवेदन पत्र एक्जी डी08 जारी किया :

1-एक कुचला हुआ घाव जो 2x .2 से0 मी0 x समडी तक गहरा जो सिर के पैराइटल भाग पर बीच में जो हेयरलाइन 6 से0 मी0 पीछे था।

2- एक नील 4x 1 से0 मी0 आकार की जो अमलाकस के दाहिने तरफ थी बीच के भाग में दाहिनी तरफ 5 से0 मी0 पर आडे आकार में थी।

9 दिनांक 15-8-81 को पुलिस प्रार्थना पर डा0 घोडावत ने मुलजिम हीरा की चोटों का डाक्टरी मुआयना किया और उसके शरीर पर निम्न 3 चोटें भोटे आले से आनी पायी गई और उसका चोट प्रतिवेदन पत्र एक्जी डी09 जारी किया।

1- एक नील 10x2 से0 मी0 आकार की जो पीठ के दाहिनी तरफ दाहिनी सुपरारूकपुलर भाग पर थी।

2- एक नील 3 x 1 से0 मी0 आकार की जो बाये जबडे के नीचले वाले के ऊपर थी बाये तरफ के नीचे के होठ से ठीक नीचे थी।

3- मजरूब दाहिनी अंगूठे पर दर्द का शिकायत कर रहा था।"

The learned counsel having drawn the attention of the court to the comparative injuries sustained by both the parties, stressed that in this background Section 149 IPC cannot be

considered to be one, which is easily available to the complainant party. There was no common object of the nature which the complainants have tried to import in the present set of circumstances and in that background, it is said that each individual accused can be held liable for his personal participation and section 149 IPC has to go. If section 149 IPC goes, then except accused Meh Ram, all others will have to be convicted for minor offences like Sections 323, 324, 147 and 148 IPC etc. , for which they have already remained behind the bars for about 5 months and 12 days.

As regards Meh Ram is concerned, the case of the learned counsel for the appellant is that he never intended to kill Bhura Ram. The accused himself has sustained injuries and if in the right of private defence, he has caused injuries to Bhura Ram ,then offence under Section 302 IPC cannot be made out against him and in that background ,it is canvassed that he can at best be convicted for exceeding the right to private defence, and he prays that let Meh Ram be convicted under section 326 IPC. Since the incident pertains to the year 1981 and the accused have been bailed during the trial , Meh Ram may be made to pay compensation of Rs.50,000/- to the next of kin of the deceased and the substantive sentence be reduced to the period already undergone.

Per contra, the learned Public Prosecutor submitted that it was on account of the way that the accused and the deceased have fought. The accused have taken law into their own hands. The accused have prevented the complainant from going to the field and in that background, they do not deserve the sympathy, as claimed.

We have heard the learned counsel for the parties and have given our thoughtful consideration to the material available on record.

Admittedly the way to field which is being claimed by the complainant party, is not a sanctioned way, so much so that it is not even recorded in the revenue record. The complainant party is claiming it through prescription. If prescription has such maturity in it that it got converted into an actionable right, the complainant party could have sought a declaration to that effect. Without taking recourse to the lawful measures, the complainant party insisted on using that way by courtesy only. This puts the complainant party on the offencive, and in that way the complainants stand on a weaker footing when they assert that the accused assaulted them. There were enough provocations created by the complainants to the accused persons by asserting a right , which was not a legally recognised

right. In that background ,when the complainants and the accused, entered into a conflict, then the question of common object stands ruled out. Both the parties have quarreled ,and have inflicted injuries to each other. It was almost a case of free fight and in that view of the matter, invoking Section 149 IPC is not considered proper by us and, therefore, Section 149 IPC deserves to be excluded from consideration.

When Section 149 IPC is taken out, then individual participation has to be seen. To the deceased it was only accused Meh Ram, who is said to have caused injuries. All other accused persons were held guilty with the aid of Section 149 IPC. Conviction with the aid of Sections 149 IPC, therefore, deserves to be set aside. After setting aside the conviction of other accused persons except Meh Ram under section 302 IPC they stand convicted under sections 323, 324, 147 and 148 IPC. For those offences whatever period they have already undergone can be considered sufficient and in that view of the matter, the appeal of the accused Ram Niwas , Heera Ram, Ram Narayan, and Baxa Ram is allowed to the extent that the conviction under section 302/149 IPC is set aside. Their conviction under sections 323, 324, 147 and 148 IPC is maintained and the

period already undergone, which is more than 5 ½ months ,is considered sufficient to meet out the ends of justice.

Now we take up the case of accused Meh Ram. He is said to have caused the fatal blow. But that was in the background that both the parities fought a free fight. Meh Ram himself has sustained injuries and in that view of the matter, it can be said that he cannot have the intention of causing death of the deceased. It may be said that he had exceeded his right of private defence. At best a case under section 326 IPC can be said to be made out against him.

In the result, the appeal of accused Ram Niwas , Heera Ram, Ram Narayan, and Baxa Ram accused is partly allowed. Their conviction and sentence under section 149 IPC is set aside and their conviction under Sections 323, 324, 147 and 148 IPC is maintained. As regards the sentence, the period already undergone is considered sufficient to meet the ends of justice.

So far as accused Meh Ram is concerned, his conviction under section 302 IPC is converted into one under section 326 IPC and his conviction under section 148 IPC is maintained. However, he is sentenced to the period already undergone. Meh Ram is directed to

pay compensation to the tune of Rs.50,000/- to the next of kin of the deceased.

(DEO NARAYAN THANVI), J. **(BHAGWATI PRASAD), J.**

L.George